

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 791 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SURESH SHERBAHADUR TAHKUR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. The petitioner - Suresh Sherbahadur Thakur, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, exercise of powers under

Section 3(1) of the PASA Act, dated January 31, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Mr. Prajapati, learned advocate appearing for the petitioner has pressed into service the ground that the representation made on behalf of the detainee on February 4, 2000 to the detaining authority has been considered and decided by him after having become functus officio and, therefore, this has resulted into denial of right of making an effective representation. The continued detention, therefore, is bad in law.

#. Mr. K.T. Dave, learned AGP has opposed this petition. According to him, the representation made on behalf of the detainee was received by the detaining authority on 8th February, 2000. The detaining authority, after considering the representation rejected the same on merits on 13th February, 2000. Mr. Dave states that the detaining authority, after rejecting the representation, sent the representation along with parawise remarks to the State Government on 13th February, which was received by the State Government on 17th February, 2000 and the representation was rejected on 22nd February, 2000. After consulting the file, Mr. Dave states that the order of detention was approved by the State Government on 5th February, 2000, and as such, the detaining authority has become functus officio. The authority, therefore, should have immediately forwarded the representation to the government for its consideration. Instead, the detaining authority has applied its mind to the representation and rejected the same. This amounts to refusal of right of making an effective representation. The continued detention of the detainee, therefore, would be bad in law. The petition deserves to be allowed on this ground alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated January 31, 2000 is hereby quashed. The detainee - Suresh Sherbahadur Thakur, is ordered to be set at liberty

forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

pirzada/